Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

MARGARET HEBERT JACKSON, DIANE ARTHUR, CONSOLIDATED WITH BARBARA ARTHUR, MARY KING HILL, ET AL.,

Petitioners,

versus

ZAPATA HAYNIE CORPORATION, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Third Circuit Court Of Appeal For The State Of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES

Respondents are the insurers of Zapata Haynie Corp., namely, David Gareth Williams, as nominee and representative of Certain Underwriters at Lloyd's, London, and English & American Insurance Company, Limited, Phoenix Assurance Company, Limited, Indemnity Marine Assurance Company, Limited, Commercial Union Assurance Company, Limited, Prudential Assurance Company, Limited Trust II, Northern Star Insurance Company, Limited, Scottish Lion Insurance Company, Limited, Insurance Company of North America (U.K.), Limited, Yorkshire Insurance Company, Limited, Sovereign Insurance Company Limited, Orion Insurance Company PLC, London & Hull Maritime Insurance Company, Limited, The Ocean Marine Insurance Company, Ltd., Cornhill Insurance Company PLC, Minster Insurance Company, Limited, Bishopsgate Insurance Company, Limited, Forsikringsaktieselskapet, Vesta Norway and Abu Dhabi National Insurance Company

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STATEMENT OF THE CASE

On October 3, 1989, the F/V NORTHUMBERLAND, a fishing vessel owned by Zapata Haynie Corporation, ("Zapata Haynie") was located off the coast of Texas when it struck a partially submerged natural gas pipeline owned by National Gas Pipeline Company of America ("NGP"). An explosion occurred which resulted in the deaths of eleven of the fourteen crewmembers aboard the vessel. Petitioners Diane Arthur, Margaret Hebert Jackson and Mary King-Hill are the survivors of three of the crewmembers who were killed.

As a result of that casualty, Zapata Haynie invoked the provisions of the Limitation of Liability Act, 46 U.S.C. § 181-189, and filed a Complaint in the United States District Court for the Western District of Louisiana, seeking exoneration from and/or limitation of liability. Pursuant to the procedures set forth in Rule F of the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, the U.S. District Court stayed all other court proceedings and ordered all persons asserting a claim in connection with the October 3, 1989 casualty to file their claims in the limitation proceeding. In response, petitioners, along with NGP and numerous other parties, filed claims and contested Zapata Haynie Corp.'s right to exoneration from and/or limitation of liability.

After commencement of the limitation of liability action, petitioners filed suits in the 38th Judicial District Court for the Parish of Cameron, Louisiana, against Zapata Haynie Corp., asserting damages under the Jones

Act, 46 U.S.C. § 688, and requesting a trial by jury. Subsequently, plaintiffs-petitioners amended their petitions by First Supplemental and Amended Petitions to assert direct actions against Zapata Haynie's insurers, pursuant to the Louisiana Direct Action Statute, La. Rev. Stat. Ann. § 22:655. The state court proceedings were stayed pursuant to the U.S. District Court's previous order, dated October 6, 1989, which stayed all such suits until the rendering of decision in the limitation of liability action.

A trial on the limitation of liability action began on March 18, 1991, in U.S. District Court for the Western District of Louisiana, with Judge Donald E. Walter presiding. Judgment was rendered on April 25, 1991, with the district court finding that NGP was 100% at fault for the casualty and that Zapata Haynie was not at fault.[1] Accordingly, Zapata Haynie was exonerated from liability. The district court's decision was affirmed on appeal to the U.S. Fifth Circuit Court of Appeals. *Zapata Haynie Corp. v. Arthur*, 980 F.2d 287 (5th Cir. 1992). This Court denied the petition for writ of certiorari, ___ U.S. ___, 113 S. Ct. 2999, 125 L. Ed. 2d 692 (1993).

In light of the ruling in the limitation of liability suit, which exonerated Zapata Haynie from liability, petitioners conceded that no further claim could be pursued against Zapata Haynie. However, petitioners sought to maintain their direct action claims in state court against Zapata Haynie's insurers. Zapata Haynie's insurers, the respondents herein, filed an Exception of No Cause of

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[1] Prior to the limitation trial, petitioners had settled separately with NGP.

Action in the state court proceeding. Respondents asserted that the petitioners' claims against them, as Zapata Haynie's insurers, were barred by principles of *res judicata,* inasmuch as the federal court had exonerated Zapata Haynie from liability. Judge H. Ward Fontenot of the 38th Judicial District Court for the Parish of Cameron, Louisiana granted respondents' Exception and dismissed the direct action claims.

Petitioners filed an appeal to the Louisiana Third Circuit Court of Appeal. The Louisiana Court of Appeal affirmed, finding that *res judicata* barred petitioners from proceeding against Zapata Haynie's insurers pursuant to the Louisiana Direct Action Statute, as that would result in relitigating the issue of Zapata Haynie's liability. A Petition for Rehearing to the Louisiana Third Circuit Court of Appeal was denied. Petitioners filed an Application for Writs of Certiorari and Review to the Louisiana Supreme Court. On May 30, 1997, the Louisiana Supreme Court denied Petitioners' Application for Writs of Certiorari and/or Review.

V.

SUMMARY OF ARGUMENT

Petitioners fail to show that any of this Court's considerations for granting a writ of certiorari are present.

The decision of the Louisiana Third Circuit Court of Appeal was that, under principles of *res judicata,* a direct action claim against insurers is barred where the assured is found without fault. That decision does not conflict with decisions of either this Court or of any of the U.S. appellate courts. Although petitioners assert that the

Louisiana appellate court's decision is in conflict with this Court's decision in *Maryland Casualty Co. v. Cushing*, 347 U.S. 409 (1954), there is no conflict. In the *Maryland Casualty Co.* case, this Court held that the Louisiana Direct Action Statute should not disturb the uniformity of maritime law. According to the 4-1-4 decision in *Maryland Casualty*, a direct action claim may be asserted, but not until after the limitation proceeding has run its course. There was nothing in the Louisiana Third Circuit Court of Appeal's opinion which is in conflict with that holding.

Nor is there any undecided important question of federal law. Even petitioners are unable to suggest any unresolved issue of law that this Court must consider. What petitioners argue is simply that the Louisiana Third Circuit Court of Appeal misapplied the principles of *res judicata*. Acknowledging that the Louisiana Third Circuit Court of Appeal correctly stated the federal *res judicata* rule, petitioners argue that there was a misapplication of this properly stated rule of law. That is not sufficient grounds for this Court granting a writ of certiorari.

VI.

ARGUMENT

1. THE LOUISIANA COURT OF APPEAL'S OPINION DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT OR ANY U.S. COURT OF APPEALS

Petitioners suggest that the Louisiana Third Circuit Court of Appeal's decision is somehow contrary to this Court's decision of *Maryland Casualty Company v. Cushing, supra,* and the Fifth Circuit's decision of *Olympic Towing Corp. v. Nebel Towing Company, Inc.*, 419 F.2d 230 (5th Cir.

1969), *cert. denied*, 397 U.S. 989 (1970). Petitioners fail to explain how the Louisiana Third Circuit Court of Appeal's decision is in conflict with either decision. A review of those cases shows that there is indeed no conflict.

This Court's decision in the *Maryland Casualty Co. v. Cushing* case was a 4-1-4 decision. Four of the Justices would have dismissed direct action claims as contrary to federal maritime law. However, in order to reach a majority, the four Justices joined with concurring Justice Clark and held that the direct action suit should not be allowed to impair the shipowner's right to indemnification and that any direct action would have to be heard after the completion of the limitation proceeding. As the Court noted, one of the purposes of the limitation statute was to draw into one court all of the claims so that they might be heard by one judge, on one state of facts, in one trial, and intelligently disposed of. *Id.* at 415. The rights of the shipowner under the Act should be declared and settled by a definitive decree of a competent court, which should be binding on all parties interested. *Id.* That is exactly the procedure followed in the present case.

The Louisiana Court of Appeal's opinion in the present case is not contrary to, and in fact is consistent with, this Court's opinion in the *Maryland Casualty Co. v. Cushing* case. Nowhere does the *Maryland Casualty Co.* case state, as contended by petitioners, that "the Louisiana Direct Action Statute controlled and the public policies therein provided the correct measure of recovery against the insurer of a vessel involved in a maritime accident regardless of any type of limitation of liability afforded the owner (charterer) by the Limitation of Liability

Act . . . " (Petition for a Writ of Certiorari, p. 10). On the contrary, as was held in the *Maryland Casualty Co.* case, the reverse is true, and the direct action statute may not impair the shipowner's rights under the Limitation Act.

The *Maryland Casualty Co.* decision resolved how the Limitation Act can be administered to avoid conflict between the Limitation Act and the Louisiana Direct Action Statute. The procedure is to first conclude the limitation proceeding, after which the direct action could be determined. That is exactly what occurred in this case. The limitation proceeding was first held in the U.S. District Court. The direct actions against Zapata Haynie's insurers were then heard in the state district court. However, the state district court dismissed the direct action claims under principles of *res judicata.*

Under Louisiana law the insurers and the assured share the same identity for purposes of *res judicata. Hannie v. Wall,* 569 So.2d 1044 (La. App. 3 Cir. 1990), *writ denied,* 573 So.2d 1116 (La. 1991). As established by Louisiana courts, there must be legal liability on the part of the assured for the insurer to have a direct action liability. *Foster v. Hampton,* 352 So.2d 197 (La. 1977), *reh'g denied,* 381 So.2d 781 (La. 1980). The Louisiana district court thus dismissed the direct action claims on the basis of this Louisiana law, not on the basis of any federal law, and clearly not contrary to any decision by this Court.

The second case which petitioners suggest is in conflict with the state appellate court's decision is that of *Olympic Towing Corp. v. Nebel Towing Co., supra.* In the *Olympic Towing* case, the issue was whether the shipowner's right to limit its liability was a defense personal

to the shipowner and thus not available to the insurer. However, the *Olympic Towing* case was definitively overruled in a subsequent *en banc* decision by the U.S. Fifth Circuit. In *Crown Zellerbach Corp. v. Ingram Indus., Inc.*, 783 F.2d 1296 (5th Cir. 1986), *cert denied*, 479 U.S. 821 (1987), the *en banc* court of the U.S. Fifth Circuit Court of Appeals revisited the question and specifically overruled *Olympic Towing Corp. v. Nebel Towing Co.* Describing the issues, Judge John Brown for the Fifth Circuit explained that, "Along the way we will determine the continued vitality of our earlier *Nebel Towing* decision on which the trial court and the panel majority relied." *Id.* at 1297. In conclusion, the *en banc* court of the Fifth Circuit ruled that, "*Nebel Towing* is overruled." *Id.* at 1304. In overruling the *Nebel Towing* case, the *Crown Zellerbach* court held that the limitation of liability defense is not personal to the shipowner. As the *Crown Zellerbach* court explained, limitation of liability is not an immunity nor an assured defense. But rather, the Limitation of Liability Act grants certain federal rights to vessel owners under certain circumstances as a matter of public policy. Thus, the underwriters' liability was fixed to that of the assured shipowner's judicially declared limitation of liability.

The present case does not even involve the question of whether insurers are entitled to benefit from the shipowner's limitation of liability. The U.S. district court did not reach the issue of whether Zapata Haynie could limit its liability to the value of the vessel because Zapata Haynie was found without fault, and thus exonerated. The only issue is whether the judgment exonerating Zapata Haynie bars a subsequent direct action against Zapata Haynie's insurers based on the same set of facts.

The state court correctly dismissed the direct action claims based upon principles of *res judicata*. As the Louisiana court of appeal held, if there can be no further claim against Zapata Haynie, there can be no further claim against Zapata Haynie's underwriters. The Louisiana Direct Action Statute does not give a plaintiff some independent cause of action. As is well established in Louisiana law, an insurer stands in the shoes of the insured and the defenses available to the insured are also available to the insurer. *Smith v. Kelly Labor Service*, 239 So.2d 685 (La. App. 4 Cir. 1970), *writ refused*, 241 So.2d 531 (La. 1970).

There is nothing in either the *Maryland Casualty Co.* or *Crown Zellerbach* case which is inconsistent with the ruling by the Louisiana appellate court in the present case. On the contrary, the Fifth Circuit's *Crown Zellerbach* decision supports the Louisiana court of appeal's decision in the present case. As the Fifth Circuit stated in the *Crown Zellerbach* case, the Louisiana Direct Action Statute allows a direct action against the liability insurer for Louisiana incurred damages:

> But the statute does not create new Louisiana liabilities. On the contrary, by its own terms, reinforced by Louisiana judicial decisions, the statute imposes liability on the insurer subject "to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State."

Id. at 1299.

Further, the Fifth Circuit acknowledged in the *Crown Zellerbach* case the well established rule which is controlling in this case. The Louisiana Direct Action Statute does not create any cause of action in and of itself; the Direct Action Statute merely provides the procedure for suing underwriters when there is legal liability of the assured.

> The decisions of the Louisiana courts have been as unambiguous as the language of the Direct Action Statute itself: there must be a legal liability on the part of the assured for the insurer to have a direct action liability.

Id. at 1301.

Because the Louisiana courts dismissed the direct action claim on grounds of *res judicata,* there is no need to determine whether the respondents' policy issued to Zapata Haynie has a "*Crown Zellerbach* clause," i.e., a provision in the policy fixing the underwriters' maximum liability to that of the assured shipowner's judicially declared limitation of liability. However, it must be pointed out that there is a misstatement in the Petition for Writ of Certiorari, wherein petitioners erroneously stated that respondents' policy issued to Zapata Haynie Corporation "has no *Crown Zellerbach* clause" (Petition for a Writ of Certiorari, p. 11)

Because the issue was moot, the Louisiana courts did not reach the question of whether respondents' policy contained language limiting underwriters' liability to that of the assured shipowner's judicially declared limitation of liability. Nevertheless, that was an alternative argument in respondents' brief before the Louisiana Third Circuit Court of Appeal. As submitted by respondents to

the Louisiana Third Circuit Court of Appeal, the Louisiana courts have held that there is no standard language required for a *Crown Zellerbach* clause. *Rogers v. Texaco, Inc.*, 638 So.2d 347 (La. App. 4 Cir. 1994). Respondents' policy did contain language limiting underwriters' liability to that liability imposed upon the assured by law. Thus, even though the Louisiana courts did not reach the issue, it is submitted that had the courts reached that issue, they would have found that respondents' policy has language fixing underwriters' maximum liability to that of the assured's judicially declared limitation of liability.

In this case there was no liability found on the part of the assured, Zapata Haynie. Under principles of *res judicata*, and according to the terms of the contract of insurance, there can be no liability of the insurers. No U.S. Supreme Court or U.S. appellate court decision is to the contrary.

2. THERE IS NO UNDECIDED IMPORTANT QUESTION OF FEDERAL LAW

In their Petition for a Writ of Certiorari, petitioners do not even argue that there is an undecided federal law. Indeed there is not. The question presented by petitioners is whether the Louisiana Third Circuit Court of Appeal properly applied federal *res judicata* procedural rules. In other words, petitioners simply allege that the Louisiana courts misapplied the federal *res judicata* rule. That is not grounds for this Court granting a writ of certiorari.

In any event, the Louisiana Third Circuit Court of Appeal correctly applied the *res judicata* rule. Louisiana

courts have held that when a state court is required to determine the conclusive effect of a judgment rendered by a federal court exercising federal question jurisdiction, it is the federal law of *res judicata* that must be applied. *Tye v. Co-Mar Offshore Operators, Inc.*, 669 So.2d 438 (La. App. 1 Cir. 1995), *writ denied*, 674 So.2d 975 (La. 1996). Under the federal doctrine of *res judicata*, four requirements must be met: 1.) the parties must be identical in the two actions; 2.) the prior judgment must be rendered by a court of competent jurisdiction; 3.) there must be a final judgment on the merits; and 4.) the same cause of action must be involved in both cases. *Eubanks v. F.D.I.C.*, 977 F.2d 166 (5th Cir. 1992); *In Re Howe v. Vaughn*, 913 F.2d 1138 (5th Cir. 1990).

Petitioners concede that the second and third criteria of the *res judicata* test are met. It is the first and fourth criteria that petitioners contend have not been met. In addressing the first criterion, petitioners argue that Zapata Haynie and its insurers lack an identity of parties because they were not both parties to the limitation proceeding. However, federal courts have held that there is an "identity of parties" even though a party was not named in the original litigation. The identity of the parties test is met when the parties' interests are closely aligned and are adequately represented by the party in the prior action. Where the claims against one are derivative of the claims against the other, there is an identity of parties sufficient to apply the principles of *res judicata*. *Eubanks v. F.D.I.C., supra.*

In addressing the specific relationship involved in this case, Louisiana courts have held that an insurer and its insured are the same parties in the legal sense of the word. *Hannie v. Wall, supra; Funai v. Air Center, Inc.*, 499

So.2d 669 (La. App. 3 Cir. 1986). As stated by the Louisiana appellate court in the *Hannie v. Wall* case, *supra,* at 1050, "For *res judicata* purposes, the insured and the insurer not only share the same qualities as parties but in essence their identities are virtually merged into one, to the extent of the policy limits."

Accordingly, there is no unsettled law as to whether the insured and insurer are the same parties for purposes of *res judicata.* The issue has been considered on several occasions and, without contradiction, it has been held that the insurer and the insured are considered the same parties for purposes of *res judicata.*

Likewise, there is no unsettled law as to when causes of action are the same for *res judicata* purposes. The federal courts have adopted the transactional test of the Restatement (Second) of Judgments to determine whether two suits involve the same claim. Where the second cause of action is based on substantially the same facts as the first claim, *res judicata* bars the second claim. *Ocean Drilling & Exploration Co., Inc. v. Mont Boat Rental Serv., Inc.,* 799 F.2d 213 (5th Cir. 1986). Under the test established by the federal courts for *res judicata,* the critical issue is not the relief requested or the theory asserted, but whether the plaintiff bases the two actions on the same "nucleus of operative facts." The rule is that *res judicata* bars all claims that were or could have been advanced in support of the cause of action on the occasion of its former adjudication, not merely those that were adjudicated. *In Re Howe v. Vaughn, supra,* at 1144. The Louisiana appellate court thus correctly stated the federal rule of *res judicata* and properly applied it to the facts in this case.

What petitioners argue is that because they had Jones Act claims, they should have been allowed, by virtue of the Louisiana direct action statute, to try their Jones Act claims in state court before a jury. There is no unsettled federal law on this issue. The federal law is settled that the shipowner's right to limit liability and litigate the issue of exoneration and limitation in federal court must be protected. As the U.S. Fifth Circuit Court of Appeals explained in *Texaco, Inc. v. Williams*, 47 F.3d 765, 767 (5th Cir. 1995), *cert denied*, ___ U.S. ___, 116 S. Ct. 275, 133 L. Ed. 2d 196 (1995), there is "a recurring and inherent conflict" between the exclusive jurisdiction vested in admiralty courts by the Limitation of Liability Act and the common law remedies provided in the Savings to Suitors Clause of 28 U.S.C. § 1333.

> The problem is that "one statute [gives the complainant] the right to a common-law remedy, which he [may seek] in the state court; and another statute [gives the shipowner] the right to seek a limitation of liability in the federal district court." [quoting from *Lagnes v. Green*, 282 U.S. 531, 539 (1931)]

Id. at 766.

While recognizing that there are certain exceptions, the *Williams* court affirmed the exclusive jurisdiction of the federal court to determine limitation. As recognized by the court in the *Williams* case, and as occurred here, sometimes there is a conflict between the Limitation of Liability Act and the Savings to Suitors Clause. However, the shipowner's right to limit liability and litigate the issue of exoneration and limitation in federal court is to

be protected. That is settled law. The fact that the Louisiana Direct Action Statute is involved in this case does not change these principles.

No separate cause of action is created by the direct action statute. The fact that the plaintiffs are afforded a right under the direct action statute to proceed directly against an insurer does not change the fact that the plaintiffs have but one cause of action arising from the circumstances of the case. *Cornish v. Freeman,* 451 So.2d 148 (La. App. 1 Cir. 1984), *writ denied,* 458 So.2d 476 (La. 1984). It is settled Louisiana law that a finding of no liability on the part of the insured has effect both as to the insured and the insurer. *Id.* at 151.

VII.

CONCLUSION

The Louisiana courts dismissed petitioners' direct action claims against the insurers of Zapata Haynie Corp., under principles of *res judicata,* on the basis that the federal court judgment exonerating Zapata Haynie Corp. from liability barred a direct action claim against Zapata Haynie's insurers arising out of the same factual claim. The federal court limitation proceeding involved the same parties and the same cause of action and reached a final judgment on the merits in a court of competent jurisdiction. Accordingly, *res judicata* bars any further action arising out of the same nucleus of operative facts.

This application of the rule of *res judicata* is not in conflict with any of this Court's decisions or any decisions of the U.S. appellate courts. The well settled rule of *res judicata* was applied.

The Louisiana Direct Action Statute and the Limitation of Liability Act do not come into collision. As petitioners concede, the federal court had exclusive jurisdiction to hear the limitation of liability suit filed by Zapata Haynie Corp. As petitioners further concede, the federal district court's decision exonerating Zapata Haynie Corp. from liability barred any further action against Zapata Haynie Corp. Although petitioners may wish that it did, the Louisiana direct action statute does not grant plaintiffs "two bites of the apple." The direct action statute is merely a procedural remedy. There being no further claim against Zapata Haynie, there could be no direct action claim against Zapata Haynie's insurers.

If petitioners' direct action claims against Zapata Haynie's insurer were permitted, that would ignore the well established and necessary doctrine of *res judicata.*

> Few legal doctrines are more intrinsic or necessary in our legal system than *res judicata.* That doctrine, which provides that a valid and final judgment precludes a second suit between the same parties and the same claim or any part thereof insures that litigation will come to an end.

Medina v. INS, 1 F.3d 312 (5th Cir. 1993).

It is indeed time for this litigation to come to an end, without this Court being required to review the matter. Consistent with established federal law, Zapata Haynie

Corp.'s liability was determined in federal district court pursuant to the Limitation of Liability Act and Rule F of the Federal Rules of Civil Procedure. As conceded by plaintiffs, no further claim can be brought against Zapata Haynie Corp. Consistent with well established federal and Louisiana law, any action against Zapata Haynie's insurers is barred by principles of *res judicata*. This entrenched doctrine resolves this claim. There is no unsettled federal law for this Court to resolve. Accordingly, it is respectfully submitted that this Court should deny petitioners' petition for writ of certiorari.

RESPECTFULLY SUBMITTED:

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Limited, Orion Insurance Company PLC, London & Hull Maritime Insurance Company, Limited, The Ocean Marine Insurance Company, Ltd., Cornhill Insurance Company PLC, Minster Insurance Company, Limited, Bishopsgate Insurance Company, Limited, Forsikringsaktieselskapet, Vesta Norway and Abu Dhabi National Insurance Company